

**REMARKS**

Claims 1-2, 4-5, 7-12, 14-16, 18, 23-24, and 26-34 are pending in the application. Claims 3, 6, 13, 17, 19-22, and 25 have been cancelled without prejudice or disclaimer. Claims 1, 4, 5, 7, 9, 10, 14-16, 23, and 24 have been amended. Claims 26-34 are new. Support for the claim amendments and new claims can be found in the specification at least at paragraphs [0008], [0012], and [0015]-[0016]. No new matter has been added.

**Claims 1, 2, and 4-5 are Allowable**

The Office has rejected claims 1-6, 19, 20, and 22, under 35 U.S.C. §102(e), as being anticipated by U.S. Patent No. 6,985,444 (“Rosen”). Claims 3, 6, 19-20, and 22 have been cancelled without prejudice or disclaimer. Applicants respectfully traverse the remaining rejections.

The cited portions of Rosen do not disclose or suggest the specific combination of claim 1. For example, the cited portions of Rosen fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1.

In contrast to claim 1, Rosen determines which telephone lines in a Plain Old Telephone System (POTS) are suitable for carrying high speed data transmissions. To determine suitability of a telephone line to carry high speed data, Rosen discloses a method for testing physical characteristics of the line. Characteristics that are determined by the test include insertion loss, phase imbalance, line length, and line gauge. Additional characteristics determined by line testing include estimates of the presence of gauge changes, bridged taps, load coils, and other elements connected to the line. Rosen, col.3, l. 60-col 4, l. 6. Thus, the characteristics determined by Rosen are physical characteristics of the line and the presence of elements connected to the line. Rosen, col. 11, ll. 62-63. In Rosen, a prediction of a data rate that the line can support is made based on the measured physical line characteristics, not based on a number of code violations, as in claim 1. Physical line characteristics are not code violations. In Rosen, the tests are not performed to determine code violations. Rather, in Rosen, the tests are performed to determine physical line characteristics. Thus, the cited portions of Rosen fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line

using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Further, the cited portions of Rosen fail to disclose or suggest measuring a count of data transmission onomalies while the digital subscriber line is in operation. In contrast, Rosen is directed to pre-operation tests and not to testing of anomalies during operation. Hence, claim 1 is allowable. Claims 2, 4, and 5 are allowable, at least by virtue of their dependence from claim 1.

**Claims 9, 10, 14, 15, 23, and 24 are Allowable**

The Office has rejected claims 9, 10, 14, 15, 23, and 24, under 35 U.S.C. §103(a), as being unpatentable over Rosen in view of U.S. Patent Application Publication No. 2002/0021708 (“Ishiai”). Applicants respectfully traverse the rejections.

Claims 9, 10, 14, and 15 depend from claim 1. As explained above, the cited portions of Rosen fail to disclose or suggest at least one element of claim 1. The cited portions of Ishiai fail to disclose or suggest the elements of claim 1 not disclosed or suggested by the cited portions of Rosen. For example, the cited portions of Ishiai fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. In contrast to claim 1, Ishiai discloses transfer of audio/video data between audio/video data servers. Ishiai shows a graphical display of audio/video clip identifications and a button to transfer a clip from one server to another. Ishiai, [0013], FIG. 7. The cited portions of Ishiai fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Therefore, the cited portions of Rosen and Ishiai, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claims 9, 10, 14, and 15 depend. Hence, claims 9, 10, 14, and 15 are allowable, at least by virtue of their dependence from claim 1.

Further, the dependent claims recite additional elements not disclosed or suggested by the cited portions of Rosen and Ishiai. For example, the cited portions of Rosen and Ishiai fail to disclose or suggest that a first set of data packet throughput points form a first display curve, a

second set of data packet throughput points form a second display curve, wherein the display curves are displayed in a manner to allow selection of a profile having the highest data packet throughput for a selected number of code violations, as in claim 14. The Office asserts that Ishiai, FIG. 7, [0073]-[0075], discloses this element. Office Action, page 11. The cited portions of Ishiai show a table, not a display curve. For at least this additional reason, claim 14 is allowable.

The cited portions of Rosen and Ishiai do not disclose or suggest the specific combination of claim 23. For example, the cited portions of Rosen and Ishiai fail to disclose or suggest that a controller selects a profile from a profile database that has a highest data packet throughput value at a particular measured number of code violations for at least one digital subscriber line, as in claim 23.

In contrast to claim 23, Rosen determines which telephone lines in a POTS are suitable for carrying high speed data transmissions. To determine suitability of a telephone line to carry high speed data, Rosen discloses a method for testing physical characteristics of the line. Characteristics that are determined by the test include insertion loss, phase imbalance, line length, and line gauge. Additional characteristics determined by line testing include estimates of the presence of gauge changes, bridged taps, load coils, and other elements connected to the line. Rosen, col.3, l. 60-col 4, l. 6. Thus, the characteristics determined by Rosen are physical characteristics of the line and the presence of elements connected to the line. Rosen, col. 11, ll. 62-63. Physical line characteristics are not code violations measured during DSL operation. Thus, the cited portions of Rosen fail to disclose or suggest a controller that selects a profile from a profile database that has a highest data packet throughput value at a particular measured number of code violations for at least one digital subscriber line, as in claim 23.

In further contrast to claim 23, Ishiai discloses transfer of audio/video data between audio/video data servers. Ishiai shows a graphical display of audio/video clip identifications and a button to transfer a clip from one server to another. Ishiai, [0013], FIG. 7. The cited portions of Ishiai fail to disclose or suggest a controller that selects a profile from a profile database that has a highest data packet throughput value at a particular measured number of code violations for at least one digital subscriber line, as in claim 23.

Therefore, the cited portions of Rosen and Ishiai, individually or in combination, fail to disclose or suggest the specific combination of claim 23. Hence, claim 23 is allowable. Claim 24 is allowable, at least by virtue of its dependence from claim 23.

#### **Claim 7 is Allowable**

The Office has rejected claim 7, under 35 U.S.C. §103(a), as being unpatentable over Rosen, in view of U.S. Patent Application Publication No. 2003/0189977 (“Sweitzer”). Applicants respectfully traverse the rejection.

Claim 7 depends from claim 1. As explained above, the cited portions of Rosen fail to disclose or suggest at least one element of claim 1. The cited portions of Sweitzer fail to disclose or suggest the elements of claim 1 not disclosed or suggested by the cited portions of Rosen. For example, the cited portions of Sweitzer fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Sweitzer discloses a digital subscriber line (DSL) communication system that may operate at different data rates including 1536 kilo-bits/second, 768 kilo-bits/second, and 384 kilo-bits/second. Sweitzer, Table 1. The cited portions of Sweitzer do not disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Therefore, the cited portions of Rosen and Sweitzer, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claim 7 depends. Hence, claim 7 is allowable, at least by virtue of its dependence from an allowable claim.

#### **Claim 8 is Allowable**

The Office has rejected claim 8, under 35 U.S.C. §103(a), as being unpatentable over Rosen in view of U.S. Patent No. 6,498,808 (“Tzannes”). Applicants respectfully traverse the rejection.

Claim 8 depends from claim 1. As explained above, the cited portions of Rosen fail to disclose or suggest at least one element of claim 1. The cited portions of Tzannes fail to disclose or suggest the elements of claim 1 not disclosed or suggested by the cited portions of Rosen. For example, the cited portions of Tzannes fail to disclose or suggest determining a first data packet

throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. In contrast to claim 1, Tzannes discloses a digital subscriber line (DSL) system that employs Discrete Multitone (DMT) modulation to improve transmission. In Tzannes, data may be transmitted on a non-interleaved path or an interleaved path. Tzannes, col. 21, ll. 1-15. The cited portions of Tzannes do not disclose or suggest determining a number of code violations on a digital subscriber line (DSL). Thus, the cited portions of Tzannes fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations, and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Therefore, the cited portions of Rosen and Tzannes, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claim 8 depends. Hence, claim 8 is allowable, at least by virtue of its dependence from an allowable claim.

### **Claims 11-12 are Allowable**

The Office has rejected claims 11-13, under 35 U.S.C. §103(a), as being unpatentable over Rosen, in view of U.S. Patent No. 6,678,245 (“Cooper”). Claim 13 has been cancelled without prejudice or disclaimer. Applicants respectfully traverse the remaining rejections.

Claims 11-12 depend from claim 1. As explained above, the cited portions of Rosen fail to disclose or suggest at least one element of claim 1. The cited portions of Cooper fail to disclose or suggest the elements of claim 1 not disclosed or suggested by the cited portions of Rosen. For example, the cited portions of Cooper fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. In contrast to claim 1, Cooper discloses transmitting and collecting performance data periodically in a packet-based network. The performance data includes a number of packets lost. Cooper, 4, ll. 30-60. The cited portions of Cooper do not disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Therefore, the cited

portions of Rosen and Cooper, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claims 11-12 depend. Hence, claims 11-12 are allowable, at least by virtue of their dependence from an allowable claim.

#### **Claim 16 is Allowable**

The Office has rejected claims 16, 17, and 21, under 35 U.S.C. §103(a), as being unpatentable over Rosen in view of U.S. Patent No. 7,218,645 (“Lotter”). Claims 17 and 21 have been cancelled without prejudice or disclaimer. Applicants respectfully traverse the remaining rejection.

Claim 16 depends from claim 1. As explained above, the cited portions of Rosen fail to disclose or suggest at least one element of claim 1. The cited portions of Lotter fail to disclose or suggest the elements of claim 1 not disclosed or suggested by the cited portions of Rosen. For example, the cited portions of Lotter fail to disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. In contrast to claim 1, Lotter discloses a wireless packet-based data link that uses TCP/IP protocol and has a TCP/IP throughput. Lotter, col. 12, ll. 9-15. The cited portions of Lotter do not disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Therefore, the cited portions of Rosen and Lotter, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claim 16 depends. Hence, claim 16 is allowable, at least by virtue of its dependence from an allowable claim.

#### **Claim 18 is Allowable**

The Office has rejected claim 18, under 35 U.S.C. §103(a), as being unpatentable over Rosen in view of U.S. Patent Application Publication No. 2003/0033262 (“Aoki”). Applicants respectfully traverse the rejection.

Claim 18 depends from claim 1. As explained above, the cited portions of Rosen fail to disclose or suggest at least one element of claim 1. The cited portions of Aoki fail to disclose or suggest the elements of claim 1 not disclosed or suggested by the cited portions of Rosen. For example, the cited portions of Aoki fail to disclose or suggest determining a first data packet

throughput value of a digital subscriber line using a first profile based on a number of code violations and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. In contrast to claim 1, Aoki discloses a switching station that can connect and disconnect a subscriber to a high speed line. A high speed line device within the switching station notifies switching equipment of fault information in the high speed line device and high speed line use information. Aoki, paragraph [0025]. The cited portions of Aoki do not disclose or suggest determining a first data packet throughput value of a digital subscriber line using a first profile based on a number of code violations and determining a second data packet throughput value of the digital subscriber line using a second profile based on the number of code violations, as in claim 1. Therefore, the cited portions of Rosen and Aoki, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claim 18 depends. Hence, claim 18 is allowable, at least by virtue of its dependence from an allowable claim.

#### **Claims 26-31 are Allowable**

Claims 26-31 depend from claim 1, which has been shown to be allowable. Hence, claims 26-31 are allowable, at least by virtue of their dependence from claim 1. Further, claims 26-31 recite additional elements not disclosed or suggested by the cited portions of Rosen.

For example, the cited portions of Rosen fail to disclose or suggest that the first data packet throughput is higher than the second data packet throughput when the number of code violations is less than a threshold and the first data packet throughput is less than the second data packet throughput when the number of code violations is greater than a threshold, as in claim 26. The cited portions of Rosen do not disclose or suggest comparing a number of code violations to a threshold. For at least this additional reason, claim 26 is allowable.

#### **Claims 32-33 are Allowable**

The cited portions of the above-cited references do not disclose or suggest the specific combination of claim 32. For example, the cited portions of the above-cited references fail to disclose or suggest that when a measured count of data transmission anomalies exceeds a profile switching threshold, a second profile is applied to a digital subscriber line, as in claim 32. Hence, claim 32 is allowable. Claims 33 and 34 are allowable, at least by virtue of their dependence from claim 32.

**CONCLUSION**

Applicants have pointed out specific features of the claims not disclosed, suggested, or rendered obvious by the cited portions of the references as applied in the Office Action. Accordingly, Applicants respectfully request reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the pending claims.

Any changes to the claims in this response, which have not been specifically noted to overcome a rejection based upon the cited art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

6-2-2009  
Date

  
Jeffrey G. Toler, Reg. No. 38,342  
Attorney for Applicants  
Toler Law Group, Intellectual Properties  
8500 Bluffstone Cove, Suite A201  
Austin, Texas 78759  
(512) 327-5515 (phone)  
(512) 327-5575 (fax)